



DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 141119982-4982-01]

RIN 0694-AG40

Clarification to Scope of Certain “600 series” Export Control Classification Numbers (ECCNs)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule revises six Export Control Classification Numbers (ECCNs) to clarify that they do not control certain basic parts, components, accessories and attachments because those basic parts, components, accessories and attachments are controlled in a new ECCN created by a rule published on July 1, 2014 to be effective on December 30, 2014. This rule also removes controls on certain monolithic microwave integrated circuit (MMIC) power amplifiers and discrete microwave transistors and related technology. These controls are no longer necessary because two other rules published after July 1, 2014, provide appropriate controls on those items. This rule also clarifies the application of “specially designed” to controls published on July 1, 2014 that would apply to printed circuit boards, populated circuit card assemblies and multichip modules to reduce the possibility of confusion. Finally, this rule revises three of the

amendatory instructions in the final rule published on July 1, to avoid negating changes to the Export Administration Regulations that became effective after that date.

DATES: This rule is effective December 30, 2014.

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SUPPLEMENTARY INFORMATION:

Background

Affirming scope of antiterrorism license requirement in ECCN 3A611.y.

As part of the Administration's Export Control Reform Initiative, BIS has added to the Commerce Control List several "600 series" ECCNs to control items of a military nature that the President has determined no longer warrant control on the United State Munitions List. The "600 series" ECCNs are identified by the numeral "6" as their third character. Many "600 series" ECCNs have a paragraph designated as paragraph .x that imposes license requirements on unspecified parts, components, accessories and attachments specially designed for a specified set of items, unless those parts, components, accessories or attachments are enumerated on the USML or specified in ECCNs listed in that .x paragraph. Many "600 series" ECCNs also have a paragraph designated as paragraph .y, which specifies items to which only the antiterrorism (AT) reason for control applies. Items covered by the .x paragraphs require a license for all destinations except Canada unless a license exception is available. Items covered by .y

paragraphs require a license for only Cuba, Iran, North Korea, Sudan, Syria, the People's Republic of China, Russia, and Venezuela.

In response to a proposed rule -- Revisions to the Export Administration Regulations (EAR): Control of Military Electronic Equipment and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (77 FR 70945, November 28, 2012) -- one commenter expressed a belief that placing .y paragraphs in separate ECCNs would lead to inconsistent classifications; for example, in some ECCNs indicator lights appeared in the .y paragraph but not in other ECCNs. In response, BIS, *inter alia*, published a second proposed rule and solicited comments on three specific ideas for organizing the controls that had been set forth in the .y paragraphs (78 FR 45026, 45034, July 25, 2013). Those ideas were: 1) creating separate ECCN-specific .y paragraphs; 2) creating a single list of "600 series" items that would be subject only to the antiterrorism and China license requirements; and 3) establishing a classification request procedure whereby a "600 series" item could be designated as subject only to antiterrorism and China license requirements, but eliminate the .y listings from the regulations or remove all .y lists completely.

After reviewing the comments on that proposal, BIS published a final rule (79 FR 37551, 37560, July 1, 2014) (hereinafter "the Military Electronics Final Rule") in which ECCN 3A611 contained a .y paragraph that imposes a license requirement to the eight destinations noted above (Cuba, Iran, North Korea, Sudan, Syria, the People's Republic of China, Russia, and Venezuela) for any of the 35 commodities listed therein, even in instances where the commodities are specially designed for something in a "600 series" ECCN other than 3A611. For example, a grounding strap that is specially designed for an ECCN 9A610 aircraft would be classified as ECCN 3A611.y and subject to the same

license requirements as other .y items because grounding straps are specified in ECCN 3A611.y and are not specified in any paragraph of ECCN 9A610. BIS explained this policy in its response to Comment 26 set forth in the preamble of the Military Electronics Final Rule. That comment reads as follows:

One commenter stated that its connectors that currently are classified under USML Category XI(c) would transfer to 3A611.y.3. The commenter noted that the problem with the 3A611.y text is that it states that it is ‘for a commodity subject to control in this entry and not elsewhere specified in any “600 series” ECCN.’ Thus, an electrical connector that is ‘specially designed’ for military aircraft equipment currently under USML Category VIII, would be classified under ECCN 9A610.x.

BIS’ response stated:

In this final rule, ECCN 3A611.y applies to parts, components, accessories and attachments that are ‘specially designed’ for a commodity subject to control in a ‘600 series’ ECCN and not elsewhere *specified* in any ‘600 series’ ECCN, and includes in its list of commodities electrical connectors. Thus, if the connectors in fact are moved from the USML to the CCL and are not ‘specified in another “600 series” ECCN,’ they are controlled by ECCN 3A611.y.

See 79 FR at 37560 (emphasis added.)

Nevertheless, since the Military Electronics Final Rule was published, BIS has received questions and comments indicating that, based on text in ECCN 9A610.x, some readers are

confused about the scope of ECCN 3A611.y. ECCN 9A610.x reads as follows: “‘Parts,’ ‘components,’ ‘accessories,’ and ‘attachments’ that are ‘specially designed’ for a commodity subject to control in this ECCN or a defense article in USML Category VIII and not elsewhere specified on the USML or in ECCN 9A610.y.” Readers noted that the text of paragraph .x explicitly excludes commodities specified in ECCN 9A610.y, but does not exclude commodities specified in ECCN 3A611.y. This omission led those readers to conclude incorrectly that, for example, a ground strap or electrical connector is controlled in ECCN 9A610.x (and subject to broad geographic license requirements that apply to .x paragraphs in the “600 series”) if the item is specially designed for an aircraft that is controlled in ECCN 9A610 or on the USML. BIS does not construe the broad expression “‘specially designed’ for . . . and not elsewhere specified . . .” found in ECCN 9A610.x, as specifying the parts, components, accessories and attachments to which ECCN 9A610.x applies. BIS also believes that properly applying the “Order of Review” procedure set forth in Supplement No. 4 to part 774 of the EAR to such transactions leads to the conclusion that commodities specified in ECCN 3A611.y should be classified in that entry rather than in the broad and unspecific .x paragraphs. However, based on the questions it has received, BIS believes that clarification is desirable to reduce the possibility of confusion about the scope of ECCN 3A611.y.

Accordingly, this rule revises ECCN 9A610 so that its .x paragraph will specifically exclude commodities specified in ECCN 3A611.y. This rule makes those same change to ECCNs 0A606, 1A613, 8A609, 8A620 and 9A619, which have .x paragraphs similar to those in ECCN 9A610. This rule also makes non-substantive changes to the .x paragraphs in those ECCNs to add clarity through parallel construction.

Removing unnecessary text from ECCNs 3A611 and 3E611.

The Military Electronics Final Rule, which becomes effective December 30, 2014, added ECCN 3A611 to control, among other things, certain monolithic microwave integrated circuit (MMIC) power amplifiers (3A611.c) and discrete microwave transistors (3A611.d) based on performance parameters that distinguished them from the MMIC power amplifiers and discrete microwave transistors that are controlled under ECCN 3A001.b.2 and .b.3, respectively. This rule would remove and reserve paragraphs .c and .d. because BIS published two other rules, discussed below, imposing license requirements on these devices under ECCN 3A001 since publication of the Military Electronics Final Rule. As a result, the devices' inclusion in ECCN 3A611 is unnecessary.

The first rule, entitled “Wassenaar Arrangement 2013 Plenary Agreements Implementation: Commerce Control List, Definitions, and Reports; and Extension of Fly-by-Wire Technology and Software Controls” (79 FR 45288, August 4, 2014), expanded the frequency ranges covered by ECCN 3A001.b.2 and .b.3 to match ECCN 3A611.c and .d. The second rule, entitled “Revision to the Export Administration Regulations: Controls on Electronic Commodities; Exports and Reexports to Hong Kong,” which is being published simultaneously with this rule, imposed license requirements on MMIC power amplifiers and discrete microwave transistors specified in ECCN 3A001 for all destinations except Canada unless the amplifier or transistor is being exported or reexported for civil telecommunications use. That rule also reduced the availability of license exceptions. Those actions will allow the U.S. Government to examine in advance the exports and reexports of MMIC power amplifiers and discrete microwave transistors that pose the greatest risk of diversion or enhancement of potential adversaries' military capabilities without imposing unnecessary licensing requirements on low

risk transactions. With these changes, the inclusion of MMIC power amplifier and discrete microwave transistors in a “600 series” ECCN is unnecessary.

In addition, this rule removes references to MMIC power amplifiers and discrete microwave transistors from ECCN 3E611 because, upon publication of this rule, MMIC power amplifiers and discrete microwave transistors will not be controlled in ECCN 3A611, and it is not necessary to control technology for their development or production in ECCN 3E611. Such technology will be controlled in ECCN 3E001 and will require a license to all destinations other than Canada.

Clarifying application of the definition of “specially designed” to printed circuit boards, populated circuit card assemblies and multichip modules.

ECCN 3A611, as described in the Military Electronics Final Rule, includes printed circuit boards and populated circuit card assemblies for which the layouts are specially designed for “600 series” items. ECCN 3A611 also includes multichip modules for which the pattern or layout is specially designed for “600 series” items. Since the Military Electronics Final Rule was published, BIS has received questions regarding how to apply the specially designed definition to printed circuit boards, populated circuit card assemblies, and multichip modules. Specifically, BIS has been asked how to apply ECCN 3A611, which ties the definition of “specially designed” to one characteristic of printed circuit boards and populated circuit card assemblies (i.e., the layout) and two characteristics of multichip modules (i.e., the pattern or layout), given that the definition of “specially designed” appears to require evaluation of a part, component, accessory or attachment as a whole. In specifying “layout” and “pattern,” BIS intended that only those characteristics of a printed circuit board, populated circuit card assembly or multichip module

need be evaluated to determine whether those items are specially designed for purpose of applying the specially designed definition. The questions BIS has received since the publication of the Military Electronics Final Rule indicate that clarification of this point is needed to prevent confusion. Therefore, this rule adds a note to ECCN 3A611 explicitly stating that, when evaluating printed circuit boards and populated circuit card assemblies, the layout of the board or assembly is the only characteristic that need be evaluated for purposes of specially designed. Similarly, when evaluating multichip modules, the pattern and layout of the module are the only characteristics that need be evaluated under the specially designed definition.

Revisions to prevent negation of EAR amendments that became effective after July 1, 2014.

This rule revises three amendatory instructions that appeared in the Military Electronics Final Rule. Without these revised instructions, on its effective date of December 30, the Military Electronics Final Rule would negate EAR provisions that became effective after that rule's July 1, 2014 publication.

First, this rule revises the amendatory instruction for Related Controls paragraph of ECCN 3A001. That instruction, made in the Military Electronics Final Rule at 79 FR 37569, must be revised to avoid negating the additions to that paragraph made effective on November 10, 2014 by the rule "Revisions to the Export Administration Regulations (EAR): Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)" (79 FR 27418, 27438, May 13, 2014). Specifically, this rule adds references in the Related Controls paragraph of ECCN 3A001 to: Category XV of the USML for certain space qualified electronics; Category XI for certain

application specific integrated circuits that are subject to the ITAR; and ECCNs 3A101, 3A201, 3A611, 3A991 and 9A515.

Secondly, this rule revises the amendatory instruction for the License Requirements section of ECCN 4A003 that appeared in the Military Electronics Final Rule at 79 FR 37573 to avoid negating changes to that section that the rule “Wassenaar Arrangement 2013 Plenary Agreements Implementation: Commerce Control List, Definitions, and Reports; and Extension of Fly-by-Wire Technology and Software Controls” (79 FR 45288, August 4, 2014) made effective on August 30, 2104. Specifically, this rule replaces the term “3.0 Weighted TeraFLOPS” with the term “8.0 Weighted TeraFLOPs,” replaces the term “Note 1” with the term “Note” and removes Note 2.

Lastly, this rule revises the amendatory instruction for the Related Controls paragraph of ECCN 5A001 that appeared in the Military Electronics Final Rule at 79 FR 37573 to conform to the changes made effective on November 10, 2014 to that paragraph by the rule “Revisions to the Export Administration Regulations (EAR): Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)” (79 FR 27438, May 13, 2014). Specifically, this rule removes text concerning telecommunication equipment used in satellites from Related Control Note 1.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2014, 79 FR 46959 (August 11, 2014), has continued the

Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Regulatory Requirements.

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined not to be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This regulation relates to a collection approved by OMB under control number 0694–0088

Simplified Network Application Processing System (SNAP) and the Multipurpose Export License Application, which carries a current annual burden estimate of 31,833 hours. BIS believes that this rule will not materially change the burden imposed by this collection

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Department of Commerce finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act otherwise requiring prior notice and the opportunity for public comment because it is unnecessary and contrary to the public interest. This rule adds text to six ECCNs alerting readers to a change related to those ECCNs that will be implemented in a final rule published on July 1, 2014 that will become effective on December 30, 2014. The change itself was included in a final rule for which two proposed rules solicited public comment. This rule also removes text from two ECCNs created by that same final rule because, in accordance with two recently published rules, the items covered by those ECCNs will be controlled elsewhere in the EAR. Retaining the paragraphs would result in inconsistent license requirements. This rule also adds a note to one ECCN clarifying how the specially designed definition applies to printed circuit boards, populated circuit card assemblies, and multichip modules license requirements. This change is being made in response to questions from the public seeking clarifications. By making these changes, BIS is decreasing the likelihood of continued public confusion on the issue. Finally, this rule revises three amendatory instructions in a rule that was published on July 1, 2014 and that will become effective on December 30, to avoid negating provisions of the EAR that became effective after July 1, 2014. These three revised instructions merely preserve existing regulatory text without making substantive changes to the July 1, 2014 rule.

The Department of Commerce finds that there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness because the changes made by this would promote clarity in the regulations. The changes made by this rule would remove obsolete text, incorporate language to clarify certain provisions, and to implement housekeeping changes to prevent negating provisions of the EAR that became effective after July 1, 2014.

Because neither the Administrative Procedure Act nor any other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730 – 774) is amended as follows:

PART 774 – [AMENDED]

1. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228;

E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

2. In Supplement No. 1 to part 774, Category 0, ECCN 0A606, “List of Items Controlled Section,” the “Items” paragraph is amended by revising paragraph x. to read as follows:

Supplement No. 1 to Part 774 – the Commerce Control List

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0A606 Ground vehicles and related commodities, as follows (see List of Items Controlled).

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List of Items Controlled

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Items:

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x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity enumerated or otherwise described in ECCN 0A606 (except for 0A606.b or 0A606.y) or a defense article enumerated or otherwise described in USML Category VII and not elsewhere specified on the USML, in 0A606.y or 3A611.y.

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3. In Supplement No. 1 to part 774, Category 1, ECCN 1A613, “List of Items Controlled Section,” the “Items” paragraph is amended by revising paragraph x. to read as follows:

1A613 Armored and protective “equipment” and related commodities, as follows (see List of Items Controlled).

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List of Items Controlled

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Items:

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x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity enumerated or otherwise described in ECCN 1A613 (except for 1A613.y) or a defense article enumerated or otherwise described in USML Category X, and not elsewhere specified on the USML or in 3A611.y.

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4. In supplement No. 1 to part 774, revise the Related Controls in the “List of Items Controlled” section of ECCN 3A001 to read as follows:

3A001 Electronic components and “specially designed” “components” therefor, as follows (see List of Items Controlled).

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List of Items Controlled

Related Controls: (1) See Category XV of the USML for certain “space-qualified” electronics and Category XI of the USML for certain ASICs “subject to the ITAR” (see 22 CFR parts 120 through 130). (2) See also 3A101, 3A201, 3A611, 3A991, and 9A515.

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5. In Supplement No. 1 to part 774, Category 3, ECCN 3A611 is amended by:

- a. Removing and reserving paragraphs c. and d. from the “Items” paragraph in the “List of Items Controlled” section.
- b. Adding at the end of the entry a note.

The addition to read as follows:

3A611 Military electronics, as follows (see List of Items Controlled).

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Note to ECCN 3A611: When applying the “specially designed” definition to determine whether a printed circuit board, populated circuit card assembly or multichip module is controlled by paragraph .g, .h, .y.15 or .y.16 of this entry, the layout of the board or assembly and the pattern and layout of the module are the only characteristics that need be evaluated under the “specially designed” definition.

6. In Supplement No. 1 to part 774, Category 3, ECCN 3E611, “List of Items Controlled Section,” the “Items” paragraph is amended by removing paragraphs b.3. and b.4.

7. In supplement No. 1 to part 774, amend ECCN 4A003 by revising the “License Requirements” section to read as follows:

4A003 “Digital computers”, “electronic assemblies”, and related equipment therefor, as follows (see List of Items Controlled) and “specially designed” “components” therefor.

License Requirements

Reason for Control: NS, MT, CC, AT

Control(s)	Country Chart (See Supp. No. 1 to part 738)
NS applies to 4A003.b and .c	NS Column 1
NS applies to 4A003.e and .g	NS Column 2
MT applies to 4A003.e when the parameters in 3A101.a.2.b are met or exceeded	MT Column 1
CC applies to “digital computers” for computerized finger-print equipment	CC Column 1

AT applies to entire entry (refer to 4A994 for controls on “digital computers” with a APP > 0.0128 but ≤ 8.0 WT).	AT Column 1
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***Note:** For all destinations, except those countries in Country Group E:1 of Supplement No. 1 to part 740 of the EAR, no license is required (NLR) for computers with an “Adjusted Peak Performance” (“APP”) not exceeding 8.0 Weighted TeraFLOPS (WT) and for “electronic assemblies” described in 4A003.c that are not capable of exceeding an “Adjusted Peak Performance” (“APP”) exceeding 8.0 Weighted TeraFLOPS (WT) in aggregation, except certain transfers as set forth in § 746.3 (Iraq).*

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8. In supplement No. 1 to part 774, amend ECCN 5A001 by revising the “Related Controls” paragraph of the “List of Items Controlled” section, to read as follows:

5A001 Telecommunications systems, “equipment,” “components” and “accessories,” as follows (see List of Items Controlled).

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List of Items Controlled

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Related Controls: 1. See USML Category XI for controls on direction-finding “equipment” including types of “equipment” in ECCN 5A001.e and any other military or intelligence electronic “equipment” that is “subject to the ITAR.” 2. See USML Category XI(a)(4)(iii) for controls on electronic attack and jamming “equipment” defined in 5A001.f and .h that are subject to the ITAR. 3. See also ECCNs 5A101, 5A980, and 5A991.

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9. In Supplement No. 1 to part 774, Category 8, ECCN 8A609, “List of Items Controlled Section,” the “Items” paragraph is amended by revising paragraph x. to read as follows:

8A609 Surface vessels of war and related commodities (see List of Items Controlled).

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List of Items Controlled

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Items:

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x. “Parts,” “components,” “accessories” and “attachments” that are “specially designed” for a commodity enumerated or otherwise described in ECCN 8A609 (except for 8A609.y) or a defense article enumerated or otherwise described in USML Category VI and not elsewhere specified on the USML, in 8A609.y or 3A611.y.

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10. In Supplement No. 1 to part 774, Category 8, ECCN 8A620, “List of Items Controlled Section,” the “Items” paragraph is amended by revising paragraph x. to read as follows:

8A620 Submersible vessels, oceanographic and associated commodities (see List of Items Controlled).

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List of Items Controlled

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Items:

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x. “Parts,” “components,” “accessories” and “attachments” that are “specially designed” for a commodity enumerated or otherwise described in ECCN 8A620 (except for 8A620.b or 8A620.y) and not elsewhere specified on the USML, in 8A620.y or 3A611.y.

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11. In Supplement No. 1 to part 774, Category 9, ECCN 9A610, “List of Items Controlled Section,” the “Items” paragraph is amended by revising paragraph x. to read as follows:

9A610 Military aircraft and related commodities, other than those enumerated in 9A991.a (see List of Items Controlled).

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List of Items Controlled

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Items:

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x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity enumerated or otherwise described in ECCN 9A610 (except for 9A610.y) or a defense article enumerated or otherwise described in USML Category VIII and not elsewhere specified on the USML, in 9A610.y or 3A611.y.

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12. In Supplement No. 1 to part 774, Category 9, ECCN 9A619, “List of Items Controlled Section,” the “Items” paragraph is amended by revising paragraph x. to read as follows:

9A619 Military gas turbine engines and related commodities (see List of Items Controlled).

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List of Items Controlled

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Items:

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x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity enumerated or otherwise described in ECCN 9A619 (except for ECCN 9A619.c or 9A619.y) or a defense article enumerated or otherwise described in USML Category XIX and not elsewhere specified on the USML, in 9A619.y or 3A611.y.

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Dated: December 12, 2014

Kevin J. Wolf

Assistant Secretary for Export Administration

